

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CAROLINE CLARK,

Plaintiff,

vs.

AUSTIN MONTESSORI SCHOOL, INC.,

Defendant.

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Civil Action No. 1:12-cv-00007

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant, Austin Montessori School, Inc., files this notice of removal pursuant to 28 U.S.C. § 1446(a).

A. Introduction

1. Plaintiff is Caroline Clark ("Clark"); Defendant is Austin Montessori School, Inc. ("AMS" or "Defendant").

2. Plaintiff sued Defendant to recover damages for alleged employment discrimination. Suit was filed in the 419th District Court of Travis County, Texas.

3. Defendant was served with the suit on January 31, 2011. Although this case was not removable when originally filed, it became removable on December 8, 2011, because of an amended petition. 28 U.S.C. § 1446(b); *Sullivan v. Conway*, 157 F.3d 1092, 1094 (7th Cir. 1998). In her First Amended Petition, Plaintiff alleges a cause of action pursuant to the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.*, and specifically, 29 U.S.C. §§ 2612(a), 2614(a), and 2615. Defendant files this notice of removal within 30 days after receiving Plaintiff's First Amended Petition. *See* 28 U.S.C. § 1446(b); *Price v. Wyeth Holdings Corp.*, 505 F.3d 624, 629-30 (7th Cir. 2007); *Ritchie v. Williams*, 295 F.3d 283, 287 n.2 (6th Cir. 2005).

B. Basis for Removal

4. Removal is proper because Plaintiff's suit involves a federal question. 28 U.S.C. §§ 1331, 1441(b); *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005); *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 194 (2d Cir. 2005); *Peters v. Union Pac. R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiff's claim arises under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, *et seq.*, and specifically, 29 U.S.C. §§ 2612(a), 2614(a), and 2615. Section 2617(a) of the FMLA creates a cause of

action in favor of employees for an employer's alleged violation of the Act. 29 U.S.C. § 2617(a)(2). Claims under the FMLA are unquestionably removable. *Connie v. Universal Oil Prod. Co.*, No. 05-2011, 2006 WL 681180, at *1-*2 (W.D. La. Mar. 14, 2006); *Williams v. La. State Bd. of Elementary & Secondary Ed.*, No. 09-914-C, 2010 WL 565390, at *1-*2 (M.D. La. Feb. 17, 2010); see *Dolese v. Office Depot, Inc.*, 231 F.3d 202, 202-03 (5th Cir. 2000).

5. Copies of all pleadings, process, orders, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. §1446(a). See Exhibit A.

6. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

7. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

C. Jury Demand

8. Plaintiff demanded a jury in the state-court suit.

D. Conclusion

9. For these reasons, Defendant asks the court to remove the suit to the United States District Court for the Western District of Texas, Austin Division.

Respectfully submitted,

/s/ Stephanie L. O'Rourke
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ATTORNEYS FOR DEFENDANT,
AUSTIN MONTESSORI SCHOOL, INC.

Certificate of Service

I hereby certify that on the 4th day of January 2012, a true and correct copy of the above and foregoing Defendant's Notice of Removal was served on all counsel of record by the method indicated:

By Facsimile: (512) 482-9556
Russell Scott Cook
Melissa A. Jacobs
The Cook Law Firm
919 Congress Avenue, Suite 1145
Austin, Texas 78701

/s/ Stephanie L. O'Rourke
Stephanie L. O'Rourke